P. A. Incorporated *and* Oil, Chemical and Atomic Workers Union, Local 4-586, International Union, AFL-CIO. Case 16-CA-9248

December 29, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On July 15, 1981, Administrative Law Judge Almira A. Stevenson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint herein be, and it hereby is, dimissed in its entirety.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

ALMIRA ABBOT STEVENSON, Administrative Law Judge: This case was heard in Odessa, Texas, on April 14–16, 1981. The charge and amended charge were served on the Respondent on or about July 14 and August 11, 1980, respectively. The complaint was issued August 29, 1980, and was duly answered by the Respondent.

The issues are whether or not the Respondent violated Section 8(a)(1) of the National Labor Relations Act by promising an employee a promotion if he discontinued his activities on behalf of the Union and threatening employees for engaging in union activities; violated Section 8(a)(5) of the Act by unilaterally discontinuing the issuance of work gloves; and violated Section 8(a)(3) by discharging Joe Ross.[1] For the reasons given below I recommend that the complaint be dismissed.

Upon the entire record, my observation of the demeanor of the witnesses, and the briefs filed by the General Counsel and the Respondent,[2] I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[3]

I. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent is engaged, at its Odessa, Texas, plant involved in this proceeding, in coating pipe for the oil-drilling industry. Its operations consist of a tube shop which is more or less an assembly-line type procedure; a custom shop where pipe and joints are cleaned and coated by hand; and a yard used mainly for storage. The employee complement is approximately 50. At material times, John Lubke was vice president of the western zone; William Anderson was Odessa area manager; Gary Richardson was plant manager; Dan Chew was custom shop section manager (foreman of the custom shop); and Dan Rimmer was operations manager of the yard department (foreman of the yard). I find that these individuals were supervisors and agents of the Respondent.

In a previous case involving the same parties, the National Labor Relations Board issued a Decision and Order dated March 14, 1980,[4] finding that the Respondent and the Union were parties to a collective-bargaining agreement effective from November 15, 1975, through November 15, 1978, covering the following appropriate unit, for which the International Union was certified in 1966:

> All production and maintenance employees employed in the maintenance, yard, custom, and tube departments by the Company at its plant located at 300 W. 61st Street in Odessa, Texas, excluding all other employees including administrative, estimating, sales, engineering, purchasing, office, technical, payroll, quality control, inspection and reclamation employees, and all foremen, guards, watchmen and supervisors as defined in the Act.

In its Decision and Order, the Board concluded that the Respondent committed the following unfair labor practices:

(1) Violations of Section 8(a)(1) of the Act: Plant Manager Gary Richardson, in July or August 1978, promised Union Committeeman Keith Eddings that the Respondent would give employee bonuses if the Odessa plant went nonunion, in early October 1978 promised to give employee Lee Shearman a promotion and a pay raise if he would get out of the Union, on or about November

[1] No issue is presented with respect to jurisdiction or labor organization status. Based on the allegations of the complaint and the admissions of the answer, I find that the Respondent is an employer engaged in commerce within Sec. 2(6) and (7), and that the Charging Party Union is a labor organization within Sec. 2(5) of the Act.

[2] Certain errors in the transcript are hereby noted and corrected.

[3] Except where credibility is specifically discussed, the facts are substantially undisputed.

[4] *P. A. Incorporated*, 248 NLRB 491 (1980).

11, 1978, promulgated to Union Committeeman Eddings an overly broad no-solicitation rule, and, on November 21, 1978, threatened Eddings that the Respondent would withdraw announced wage increases if the employees continued to fight for the Union; (2) violations of Section 8(a)(5) of the Act: on and after November 9, 1978, refusing to recognize and bargain with the Union in the appropriate unit, and on November 21, 1978, announcing unilaterally determined wage increases to the bargaining unit employees. The Respondent has apparently taken no action to comply with the Board's Order in that case which is pending before the United States Court of Appeals for the Fifth Circuit.

B. *Alleged Violations of Section 8(a)(1)*

The complaint alleges in effect and the answer denies that, in February 1980, Plant Manager Gary Richardson promised employee L. B. Whiteside a promotion if he discontinued his activities on behalf of the Union; and on or about August 4, 1980, Yard Foreman Don Rimmer informed Whiteside that he could not be promoted because of the Union and that Rimmer had been assigned to the yard department "to get rid of all the niggers and old hands" and then the Company would be rid of the Union.

L. B. Whiteside, a black, has been employed by the Respondent 15 years. He operates a forklift in the yard where 12 employees are employed. An officer of the union, he was one of the union negotiators of the last collective-bargaining agreement, negotiated in 1975. He testified against the Respondent in the prior NLRB proceeding.

Whiteside testified in this case that on February 4 or 5, 1980, Richardson told him, in another employee's presence, "that if I got out of the Union, he would make me a boss of the Ralph Low[e] Yard . . . a new yard just acquired by the Company"; that Whiteside responded he would take the job "if the Union would come along with me"; but that Richardson told him, "I had to get out of the union, period, in order to get the job." Whiteside also testified that on August 4, 1980, he asked Yard Foreman Rimmer why he had never been promoted to general operator (one of the highest paid nonsupervisory classifications in the plant) and that Rimmer told him, on this and several other occasions before and afterwards, "that I couldn't make general operator because I was in the union," and that Rimmer had been assigned as foreman of the yard "to get rid of all the niggers and old union men [and] if he got rid of the niggers, he'd get rid of the union."

As the General Counsel points out, this testimony is unrebutted inasmuch as neither Richardson nor Rimmer was called to the witness stand, Richardson because he was hired by a Saudi Arabian company not affiliated with the Respondent and left this country in February 1981, and Rimmer because he has been discharged and, as the Respondent's counsel stated, is "no longer under [the Respondent's] control." The General Counsel's reliance doubtless is on the "missing witness rule" which the Board has defined as follows:[5]

> . . . where relevant evidence which would properly be part of a case is within the control of the party whose interest it would naturally [serve] to produce it, and he fails to do so, without satisfactory explanation, the [the trier of fact] may draw an adverse inference that such evidence would have been unfavorable to him.

Here, the Respondent's explanation for its failure to produce Richardson and Rimmer seemed less than satisfactory, especially as to Rimmer.[6] But while it is perhaps the usual, it is not the invariable, practice to credit the General Counsel's witnesses in such a situation,[7] and other factors prevent me from crediting Whiteside.

Whiteside was prone to exaggeration; he was inconsistent at times; and his demeanor did not create enough confidence in his reliability to justify accepting his word without dependable corroboration. Thus, Richardson may have actually intended only to indicate that the Respondent's foremen were not allowed to be union members, rather than to promise him a reward for abandoning the Union. The only other testimony as to any such remark by Richardson was given by Joe Ross whom I find below to be an undependable witness. Further, it seems unlikely that Richardson would hold out the foreman's position described by Whiteside in view of Vice President Lubke's testimony, which I credit, that the Respondent acquired the Ralph Lowe Company on December 28, 1979; that Richardson had no authority over the newly acquired operation; and that there were no openings in the yard of the new operation, contrary to Whiteside's testimony that the Respondent hired a man off the street to fill the yard foreman's job there.

The remark Whiteside attributed to Rimmer about getting rid of the Union by "firing the niggers and the old union men" is corroborated only by testimony by Ross, and by testimony given by Darrell Taylor of similar remarks "continuously" made by Richardson, whom he alleged also referred specifically to Whiteside as a "prime problem causer for the union" he was going to fire. However, Taylor's credibility was undermined by his admission that he has served a prison term for felony, by his obvious exaggerations, and by the bias against the Respondent he revealed in a letter written after he quit the Respondent's employ.

Other factors which mitigate against Whiteside are the dubiousness of his qualifications for the job of general operator featured in his testimony, and his acknowledge-

[5] *Martin Luther King Sr. Nursing Center*, 231 NLRB 15, fn. 1 (1977).

[6] The fact that Rimmer was discharged does not establish, by itself, that he is no longer within the Respondent's control as meant by the rule. Thus, the Respondent does not assert that it does not know Rimmer's whereabouts or that it tried unsuccessfully to serve a subpena on him. As to Richardson, the Respondent appears to know his whereabouts but did not, as far as the record shows, apply for permission to take a deposition from him under Sec. 102.30 of the Board's Rules and Regulations, Series 8, as amended. On the other hand, I note that Richardson did not leave this country until February 1981, 6 months after the charge was served on the Respondent and 5 months after the complaint was issued. In these circumstances it is not clear that I would be justified in presuming that Richardson would not have been available and would not have been called as a witness had the hearing been scheduled during the 5-month period between the time the complaint was issued and the time he left the country.

[7] See, e.g., *Delta Metals, Inc.*, 236 NLRB 1665, 1669 (1978).

ment that other blacks and union supporters prospered at the Respondent's plant before the charge was filed in this case, such as Roy Brown, another member of the 1975 negotiating team, promoted in October 1979 and February 1980; Harrison Stewart, a black man who also testified against the Respondent in the prior unfair labor practice proceeding, promoted to general operator in April 1980; and Adam Hignojos, a union committeeman in 1978, promoted to general operator in the custom shop in 1978 and foreman of the custom shop in April 1980.

Accordingly, I find that these allegations are not supported by credible evidence, and I conclude that they must be dismissed.

C. *Alleged Violation of Section 8(a)(5)*

The complaint alleges, and the answer denies, that in July 1980 the Respondent refused to bargain with the Union by unilaterally discontinuing its prior practice of issuing work gloves to employees in the yard department.

The complaint alleges and the Board made a finding in its Decision and Order at 248 NLRB 491, which is binding on me, that the Union is the exclusive bargaining representative of an appropriate unit of all production and maintenance employees at this plant.

It has long been the Respondent's practice to issue rubber-like chemical-covered fabric gloves costing about $5 a pair to its employees, including its yard employees who received a pair a week. In late July 1980, Wayne Hale, who had become plant manager the preceding April, noticed gloves strewn about the premises including the yard, and issued instructions to all supervisors to "attempt to control the use of gloves and stop the waste." Hale did not intend to stop the distribution of gloves entirely but one of his supervisors, Dan Rimmer, foreman of the yard, informed the yard employees that Hale had forbidden him to issue any gloves because they were too expensive. The Union was not notified of or bargained with about Rimmer's action.

In early August, Vice President Lubke informed Hale that a complaint had been made to the NLRB (the pertinent charge was served on the Respondent August 12). Hale thereupon investigated and, upon discovering that Rimmer had quit issuing gloves altogether, ordered Rimmer "to start issuing gloves, like we had been doing before."[8]

In my opinion, Rimmer's conduct did not amount to "a material, substantial [or] significant" unilateral change in working conditions.[9] On the contrary, it was a simple mistake with minimal effect on only a few employees for a brief period of time, rectified immediately upon being brought to the plant manager's attention.[10] I therefore conclude that this allegation should be dismissed.

[8] Based on Hale's credited testimony. I cannot credit Whiteside that no gloves were issued for a period of 3 months.

[9] See *Peerless Food Products, Inc.*, 236 NLRB 161 (1978).

[10] *Peerless Food Products, Inc., supra; Bureau of National Affairs, Inc.*, 235 NLRB 8 (1978). I find it unnecessary to rule on additional grounds advanced by the Respondent for dismissing this allegation.

D. *Alleged Violation of Section 8(a)(3)*

The complaint alleges that the Respondent discharged Joe Ross on January 21, 1980, because he joined or assisted the Union or engaged in union or protected concerted activities. The Respondent contends Ross was discharged for cause.

1. Facts

Joe Ross was employed at this plant for 17 years. Around 1972 Ross was assigned to the custom shop as a sandblaster.[11] He progressed to operator and in 1975 or 1976 was appointed general operator.[12] At the time of Ross' discharge on January 21, 1980, the custom shop complement consisted of Dan Chew who had been foreman since 1978; Adam Hignojos employed 3 years and a general operator for 2 years; Arthur Gonzales, an operator; and Richard French and one other employee (Joe) who were sandblasters. Dan Chew was a member of the Union until appointed to his first supervisory position in 1974. Adam Hignojos was a union committee member in 1978 and as such participated in the contract negotiations of October and November that year; he attended the hearing held in the prior NLRB proceeding in April and June 1979 relating to those negotiations, sitting with the General Counsel and union officials. Richard French was a member of the Union in September and October 1978. Joe Ross resigned his union membership in September 1969 and has never rejoined, nor has he attended any meetings of the Union.[13]

Ross was considered by management and employees to be an experienced, skilled, and knowledgeable employee. Ross received no discipline or reprimands until the events involved in this case. During the summer of 1979, Ross received an award for 15 years' service with the

[11] The function of the custom shop is to clean steel pipe used by the oil drilling industry and coat it with plastic to retard rust and corrosion. Whereas the tube shop deals only with straight pipe and pipe joints, the custom shop does more difficult work with fabrications, crooked joints, vessels, valves, and collars of various shapes and sizes. The pipe is blown out to remove sand and dirt and then burned to remove grease, oil, and parafin; it is then wheelabrated (thrown into a spinner and cleaned with steel grit), sandblasted with a hose, primed, and coated.

[12] A general operator is usually an experienced employee who is capable of doing any type of coating and is paid about 20 cents an hour more than an operator who is skilled in only one type.

[13] I cannot credit any of Ross' testimony regarding coercive remarks Plant Manager Richardson allegedly made to him during 1978 and 1979, that he was going to get rid of the old hands, old folks, the niggers, Ross, Whiteside, and anybody that was with the Union; that Richardson offered Ross a bonus and a foreman's job if he would help get a petition started to get rid of the Union; nor Ross' testimony about starting to talk about being interested in joining the Union. This testimony was vague and inconsistent as to what Richardson allegedly said, when he said it, and how it affected Ross' relationship with Richardson; and it conflicted with other testimony by Ross that Richardson was praising his work and telling him "not to let those damn Mexicans get the best of me," apparently during the same period. Ross did not say he told Richardson or any other member of management he was interested in joining the Union nor was there any statement to that effect in his pretrial affidavit. Nor can I credit Darrell Taylor that once in August 1979, and approximately 25 times after that during Taylor's last 2 months of employment, he recommended that Richardson promote Ross to foreman and Richardson replied, "Hell, no, he's not going to promote that union-loving son of a bitch; he'd get rid of him." In addition to other considerations relevant to Taylor's unreliability set forth above, this testimony is also inconsistent with testimony by Ross heretofore recited.

company, and was told at that time by Foreman Chew that he "did a good job," and by Executive Vice President Ward that "we appreciate your work."

Ross was disappointed that Chew was designated foreman of the custom shop instead of him and he was "hurt" that Hignojos was promoted to the same level of general operator occupied by Ross when Hignojos had so much less experience than Ross. Although Chew designated Ross the ranking general operator, because, he said, Ross was the senior employee in the shop and Chew looked up to and respected him, conflict nevertheless developed between Ross and Hignojos. Hignojos said the conflict was caused by Ross' favoring short cuts in the work and refusing to do his share. Richard French confirmed that Ross "slacked off" during his last 2-1/2 or 3 years and particularly during his last 6 months when "you wouldn't be able to find him, when you needed him." Chew agreed, reciting an occasion in August 1979 when the shop was engaged in a special assignment and Ross refused to work overtime and left without telling Chew.

In late August or early September 1979 while Chew was on vacation, the conflict between Ross and Hignojos came to a head when Hignojos refused Ross' order to load some pipe because he felt Ross should load them himself and shortly thereafter Hignojos needed Ross to help shoot (coat) couplings and found Ross in the plant bathroom shaving. Hignojos took the matter to Richardson who talked with the two of them separately. In his interview, Hignojos complained that Ross did not do his share and encouraged the employees to do slipshod work. Richardson told him to continue doing his own work the way it was supposed to be done and not to worry about Ross. Ross testified that Richardson was only "trying to create trouble between us" by telling each of them he was a boss. When Chew returned from vacation, Richardson informed him that Hignojos had complained about Ross' not doing his share of the work, and Chew responded that something should be done about the conflict between them. Richardson promised to think about it. A few weeks later Chew complained again about the problem and Richardson sent for Ross and offered him the job of coupling coordinator in the tube shop and Ross accepted it. Ross testified that Richardson told him at this interview, "I was creating problems up there at the Custom Shop."[14]

Things went smoothly in the custom shop while Ross was in the tube shop, but after about 2 weeks Richardson told Chew he had to transfer Ross back because "he got to visiting the working hands down there [in the tube shop] too much and the supervisors were throwing a fit about it." Ross testified Richardson told him he was creating problems in the tube shop, but Ross denied it on the grounds that he could not even communicate with the employees in the tube shop, much less create problems, because he could not speak Spanish with them and they could not speak English with him.[15] Upon Ross' return, Chew posted a notice dated October 26, 1979, describing Ross' and Hignojos' duties in another attempt to resolve the conflict between them. The notice put Ross in charge of equipment maintenance and Hignojos in charge of coating operations.[16]

In December 1979 a large quantity of 10-inch pipe and pup joints which the Company had coated for Gulf Oil Company was returned to be checked for improper coating and for recoating if necessary. Chew assigned the testing, or sparking, job to Ross. On December 30, Ross borrowed a lift from the yard, carried the pipe to the airhose, and blew the sand and grit out of it. On December 31, Ross did the sparking and reported that some of the pipe had holidays (flaws in the coating) but the pups were holiday free. Chew and Richardson, in Ross' presence, checked Ross' work and found some of the pipe Ross had marked good had holidays and some of the pup joints were not holiday free. Chew wrote this incident up in a memo to Richardson on January 7, 1980. When Chew discussed the incident with Ross, Ross denied telling Chew that the pups were holiday free, so Chew wrote another memo to Richardson, with copies to Vice President Lubke and Area Manager Anderson, on January 8, affirming his January 7 report despite Ross' denial. Chew added that some of the pipe that Ross had marked bad had no holidays and some he had marked good were bad when he and Richardson resparked them. Chew's memo continued:

> He is irresponsible. This man interferes with production and the morale of the employees. He was transferred to the tube shop because he could not work with the employees at the custom shop. Within two weeks he had cuased [sic] the same friction in Tube Shop. He was put back in the custom shop. He has been a problem for a long time. I am requesting his transfer or termination.[17]

On January 15, Ross was summoned to Richardson's office where, in the presence of Chew and Area Manager William Anderson, Richardson confronted Ross with his poor performance, and asked if there was a reason for it as they were all there to help him. Ross re-

[14] At another point, Ross testified that neither Richardson or Chew discussed his transfer to the tube shop with him.

[15] Ross testified at another point that he was transferred back to the custom shop because he turned out so many collars in the tube shop that the custom shop could not keep up. I find that this was not the reason for Ross' return to the custom shop.

[16] I cannot believe Ross' testimony that Richardson told him at that time he put him in charge of maintenance because it would give him a wage increase and Ross would "be above the other guy." Ross did not receive an increase.

[17] The facts with regard to this incident are based on the credited testimony of Chew supported by documentary evidence. I consider Chew, who is no longer employed by the Respondent and whose demeanor was very impressive, generally the most credible of the witnesses. Ross' account was too inconsistent and improbable to be believed. Thus, he said he reported some of the pup joints bad and some holiday free; that he also agreed with Chew that he reported all the pup joints holiday free and denied he ever told Chew he had not done so. Ross also testified that the pipe which sparked did so because it was full of sand and debris which he wanted to blow out but was refused a lift to carry it to the airhose; and that it did not spark when Chew and Richardson tested it because, although still full of sand and grit, they "had the ground off" so the test could not produce sparks. At another point, Ross indicated that the pipe he reported he had did not spark when Chew and Richardson tested it because they blew the sand and grit out of it before they sparked it, which they had not allowed him to do.

plied he thought the pups were good and did not know why they were bad, that he might have forgotten to look at the other end of them and that his eyesight was not all that good. Anderson directed Richardson to check the equipment and the lighting to make sure they were in working order though other employees were having no problems with them.[18]

Meanwhile, Chew set up a second shift because of an overload of work in the custom shop and assigned Ross and Richard French to it. On January 16, the day after Ross' meeting with management, Chew directed them to coat some pups which Hignojos had sandblasted and primed, coat some couplings, and sandblast and prime some fabricated pieces for coating by the day shift. The day shift discovered, however, that all the pups had not been coated and those which were had to be reworked because the coating was blistered and had holidays in it, and a fab piece had been primed with sand in it and had to be burned out, reblasted, and reprimed before it could be recoated. Chew reported this to Richardson in a memo dated January 17, adding that he asked Ross if he forgot to blow the sand out of the pipe and Ross told him he did blow it out and did not know how the sand got in it. Chew ended his memo with a recommendation, "You need to have a talk with him."[19]

On January 17, Ross and French again failed to complete the work assigned to the night shift, and again did an unacceptable job coating the pups. In his memo to Richardson dated January 18, Chew recommended that Ross "needs to be talked to about his job."[20]

On January 18, Richard French told Foreman Chew that he did not want to work the second shift with Ross any longer because Ross did not do his share of the work, and Chew told them both to return to the day shift the next day.[21] Meanwhile, Chew left instructions for French to coat some couplings with 519 that night and for Ross to coat some other couplings which were a rush job. During the shift Ross telephoned Chew at home that he could not do the job assigned to him and that Chew should direct French to do it. Chew said no, French must do the job assigned to him as both jobs had to be completed by the end of the shift. Sixteen of the couplings coated by Ross had to be burned out and recoated.[22] Chew reported these events in a January 19 memo to Richardson, which he ended with, "Joe has a bad attitude which is hurting the attitude of the employees in the Custom Shop and their production."

On January 22, Chew was called into Vice President Lubke's office and, in the presence of Lubke, Chew, and Anderson, Richardson discharged him.[23] The discharge slip made out on Ross and signed by Vice President Lubke states:

> After several warnings by supervisor and managers of the Odessa Plant, this action had to be taken because of the following reasons: unable to work with his co-workers and supervisors, poor production, poor-quality, bad attitude and work habits.[24]

2. Conclusions

To establish the alleged discriminatory nature of Ross' discharge, the General Counsel relies on the union animus of the Respondent and of Plant Manager Richardson as revealed in the prior unfair labor practice proceeding; Ross' recognized status as the most experienced, skilled, and knowledgeable employee in the custom shop; the alleged abruptness of his discharge after 17 years' employment; and the absence of progressive discipline.

It might seem that the Respondent's management was inept in dealing with the failings of an old and theretofore valued employee. However, it was established by credible, corroborative testimony that Ross' performance began to deteriorate sometime after he mfssed out on the

[18] This account of the interview represents my best estimate of what most likely took place based chiefly on the testimony of Chew, supplemented by that of Anderson. Ross' testimony to the effect that, after he gave his version as set forth in the footnote above, he told the supervisors, "that I would like to know if I could get in the union . . . As long as [Richardson] was with P. A. that I wanted to be a union member . . . That I would love to be in it and be treated like everybody else," was credibly denied by Chew and Anderson and was inherently improbable. When asked to expain what he meant by wanting to be in the Union so he would be treated like everybody else, Ross said he was hurt because Hignojos was in the same classification as he even though Hignojos had less seniority; but he then said that was not the reason, as the reason was that Richardson was creating trouble between himself and Hignojos "so he could get a reason to kick me out."

[19] Based on Chew's credited testimony. Although Ross remembered little about this incident, he claimed he was not familiar with "519" coating which was designated for this job, as it had seldom been used by the Company. Chew credibly testified that 519 had been used in the custom shop since before he arrived there.

[20] Ross blamed his low production and his difficulties with the coating on the poor condition of these pipes and his unfamiliarity with 519.

[21] Based on the corroborative testimony of Chew and French. I do not credit Ross, who was not corroborated, that Chew told him they were being returned to the day shift because Chew said French was drinking on the job, although Ross protested that he himself did not say French was drinking.

[22] Based on Chew's credited testimony. Ross testified he was the one assigned to coat with 519, and in his telephone conversation with Chew he told Chew about his difficulties applying the 519 and he wanted French to help him, but Chew refused and told him to have the couplings coated with 519 by the end of the shift even if he had to paint it on with a brush. Ross was not suprised, he said, when many of the couplings were found to be defective. Chew credibly testified that in any event 519 is applied as a spray and he denied ever telling Ross to put it on with a brush.

[23] Based on Anderson's and Lubke's credited accounts, corroborated in the main by Chew. Ross testified that, when Richardson informed him he was discharged, he told Richardson he "didn't want to hear nothing about it" and Richardson gave him no reason for the discharge; that he thought he was being fired for "straightening up some of [Richardson's] messes there in LaMesa and Seminole," or for abuse of the Company's credit card for buying gasoline because, he said, "the gas was pouring out of my car," but then he said, "I was using [the] gasoline to clean the coating, so I could recoat his mess." On cross-examination, Ross testified that at the discharge interview he asked for his bonus, a reference to Richardson's alleged promise of a bonus if he would help get the Union out; although he had not signed the decertification petition or otherwise helped to get the Union out, he said, "I wanted them to know that I knew about it." Ross further testified, on cross-examination, that about the time he walked out of the interview, he told the management representatives, "Well, let's just wait a minute about my firing. I want to ask you about me joining the union. Before you fire me, I want you to know, I would love to be in the union." Ross' pretrial affidavit contains no reference to Ross' asking for a bonus or saying he wanted to join the Union and the three management witnesses credibly denied that he did.

[24] I accept as reasonable Foreman Chew's testimony that French was not disciplined for the unsatisfactory performance of the night shift because he did not bear the responsibility borne by Ross as a general operator.

customshop foreman's job and Hignojos was promoted to his level, both of which incidents he admittedly resented. It was doubtless this resentment which was behind Ross' conflicts with Hignojos and his tendency during his last months of employment to do less than his share of the work. By the fall of 1979, Ross' conduct interfered with the work of the custom shop so much that Richardson and Chew felt required to transfer him to the tube shop and, then, when that failed even though he had been informed of the problems he was causing, to assign him and Hignojos to separate areas of responsibility in the custom shop. None of these steps had the desired effect, however, and then in late December 1979 Ross turned in such a poor performance on an important job that Chew recommended his transfer or termination, but instead he was counseled both by Foreman Chew individually and by Chew, Richardson, and Anderson together on January 15, 1980. Nonetheless, Ross turned in poor performances the rest of the week. It is clear, therefore, that Ross' discharge was not abrupt, but was based on his deteriorating performance over a considerable period of time, culminating in his disregard of management's efforts to turn him around at the beginning of his last week. Although no progressive discipline was handed out in the form of written warnings or suspension, it was not shown that it was the Respondent's practice to follow such a disciplinary procedure at this plant. In any event, as Ross was told that his transfers were made because of the problems he caused in both shops, and as he was counseled by his foreman and by management as a group, it cannot be said that he was not forewarned that his conduct had become unacceptable.

With regard to the alleged antiunion motivation, the record shows that Ross had not been a member of the Union during the last 10 years of his employment, since long before the Respondent's unfair labor practices of 1978. Although the Respondent revealed hostility toward the Union at that time, it had no reason, except for the absence of Ross' signature on the decertification petition, to believe that he was one of the Union's advocates or supporters. Nothing that happened subsequently would reasonably lead management to suspect anything different. Ross' attempt to establish an expression of intent to cast his lot with the Union at his counseling session of January 15 was totally incredible. But even if he had expressed such an intent, it is impossible to believe that management would have fired him for it, when there were other employees known to be union leaders, officials, and advocates who were tolerated and even advanced. Moreover, Foreman Chew, who initially recommended termination and was responsible for the reports of unsatisfactory performance which eventually resulted in termination, had himself been a union member; and two of the employees who complained about the difficulties of working with Ross were Richard French who had also been a union member and Adam Hignojos who was a prominent and well-known union leader.

Accordingly, in all the circumstances, including the absence of credible evidence of current hostility toward the Union, the absence of credible evidence that Ross was an advocate or supporter of the Union or that the Respondent had reasonable grounds for suspecting that he was, Ross' job performance deterioration over a period of several months during which he was cautioned and counseled culminating in a week of less than satisfactory performance, all of which interfered with the efficiency of the Respondent's operations, and the absence of disparate treatment, I find that a preponderance of the credible evidence fails to establish that the reason advanced for Ross' discharge was a pretext or that his discharge was to any extent motivated by discriminatory considerations. I conclude that this allegation should be dismissed.

Upon the foregoing findings of fact, conclusions of law, and the entire record, I hereby issue the following recommended:

ORDER[25]

The complaint is dismissed entirely.

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[25] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."